

partner shall serve on all parties to the action a copy of the statement.

Rule 249. Action for Adjustment of Partnership Items Treated as Action for Readjustment of Partnership Items

(a) **Amendment to Petition:** If, after the filing of a petition for adjustment of partnership items (see Code Section 6228(a) and Rule 241(a)) but before the hearing of such petition, the Commissioner mails to the tax matters partner a notice of final partnership administrative adjustment for the partnership taxable year to which the petition relates, then such petition shall be treated as a petition in an action for readjustment of the partnership items to which such notice relates. The petitioner, within 90 days after the date on which the notice of final partnership administrative adjustment is mailed to the tax matters partner, shall file an amendment to the petition, setting forth every error which the petitioner alleges to have been committed by the Commissioner in the notice of final partnership administrative adjustment, and the facts on which the petitioner bases the assignments of error. A copy of the notice of final partnership administrative adjustment shall be appended to the amendment to the petition. On or before the day the amendment to petition is delivered to the Court, or, if the amendment to petition is mailed to the Court, on or before the day of mailing, the tax matters partner shall serve notice of the filing of the amendment to petition on each partner in the partnership as required by Code Section 6223(g).

(b) **Participation:** Any partner who has filed a timely notice of election to participate in the action for adjustment of partnership items shall be deemed to have elected to participate in the action for readjustment of partnership items and need not file another notice of election to do so. Any other partner may participate in the action by filing a notice of election to participate within 90 days from the date of filing of the amendment to petition. See Rule 245.

Rule 250. Appointment and Removal of the Tax Matters Partner

(a) **Appointment of Tax Matters Partner:** If, at the time of commencement of a partnership action by a partner other than the tax matters partner, the tax matters partner is not identified in the petition, then the Court will take such action as may be necessary to establish the identity of the tax matters partner or to effect the appointment of a tax matters partner.

(b) **Removal of Tax Matters Partner:** After notice and opportunity to be heard, (1) the Court may for cause remove a partner as the tax matters partner and (2) if the tax matters partner is removed by the Court, or if a partner's status as the tax matters partner is terminated for reason other than removal by the Court, then the Court may appoint another partner as the tax matters partner if the partnership fails to designate a successor tax matters partner within such period as the Court may direct.

Rule 251. Decisions

A decision entered by the Court in a partnership action shall be binding on all parties. For the definition of parties, see Rule 247(a).

TITLE XXV.—SUPPLEMENTAL PROCEEDINGS

Rule 260. Proceeding to Enforce Overpayment Determination

(a) **Commencement of Proceeding:** (1) *How Proceeding Is Commenced:* A proceeding to enforce an overpayment determined by the Court under Code Section 6512(b)(1) shall be commenced by filing a motion with the Court. The petitioner shall place on the motion the same docket number as that of the action in which the Court determined the overpayment.

(2) *When Proceeding May Be Commenced:* A proceeding under this Rule may not be commenced before the expiration of 120 days after the decision of the Court determining the overpayment has become final within the meaning of Code Section 7481(a).

(b) **Content of Motion:** A motion to enforce an overpayment determination filed pursuant to this Rule shall contain the following:

(1) The petitioner's identification number (e.g., Social Security number or employer identification number) and current mailing address.

(2) A statement whether any dispute exists between the parties regarding either the fact or amount of interest payable in respect of the overpayment determined by the Court and, if such a dispute exists, clear and concise lettered statements of the facts regarding the dispute and the petitioner's position in respect of each disputed matter.

(3) A copy of the Court's decision which determined the overpayment, together with a copy of any stipulation referred to therein and any computation filed pursuant to Rule 155 setting forth the amount and date of each payment made by the petitioner.

(4) A copy of the petitioner's written demand on the Commissioner to refund the overpayment determined by the Court, together with interest as provided by law; this demand shall have been made not less than 60 days before the filing of the motion under this Rule and shall have been made on the Commissioner through the Commissioner's last counsel of record in the action in which the Court determined the overpayment which the petitioner now seeks to enforce by this motion.

(5) If the petitioner requests an evidentiary or other hearing on the motion, then a statement of the reasons why the motion cannot be disposed of by the Court without a hearing. For the circumstances under which the Court will direct a hearing, see paragraph (d) of this Rule.

(c) **Response by Commissioner:** Within 30 days after service of a motion filed pursuant to this Rule, the Commissioner shall file a written response. The response shall specifically admit or deny each allegation set forth in the petitioner's motion. If a dispute exists between the parties regarding either the fact or amount of interest

payable in respect of the overpayment determined by the Court, then the Commissioner's response shall also include clear and concise statements of the facts regarding the dispute and the Commissioner's position in respect of each disputed matter. If the Commissioner agrees with the petitioner's request for a hearing, or if the Commissioner requests a hearing, then the response shall include a statement of the Commissioner's reasons why the motion cannot be disposed of without a hearing. If the Commissioner opposes the petitioner's request for a hearing, then the response shall include a statement of the reasons why no hearing is required.

(d) Disposition of Motion: A motion to enforce an overpayment determination filed pursuant to this Rule will ordinarily be disposed of without an evidentiary or other hearing unless it is clear from the motion and the Commissioner's written response that there is a bona fide factual dispute that cannot be resolved without an evidentiary hearing.

(e) Recognition of Counsel: Counsel recognized by the Court in the action in which the Court determined the overpayment which the petitioner now seeks to enforce will be recognized in a proceeding commenced under this Rule. Counsel not so recognized must file an entry of appearance pursuant to Rule 24(a)(3) or a substitution of counsel pursuant to Rule 24(d).

(f) Cross Reference: For the need, in the case of an overpayment, to include the amount and date of each payment made by the petitioner in any computation for entry of decision, see paragraphs (a) and (b) of Rule 155.

Rule 261. Proceeding to Redetermine Interest on Deficiency

(a) Commencement of Proceeding: (1) *How Proceeding Is Commenced:* A proceeding to redetermine interest on a deficiency assessed under Code Section 6215 shall be commenced by filing a motion with the Court. The petitioner shall place on the motion the same docket number as that of the action in which the Court redetermined the deficiency.

(2) *When Proceeding May Be Commenced:* Any proceeding under this Rule must be commenced within one year after the date that the Court's decision becomes final within the meaning of Code Section 7481(a).

(b) Content of Motion: A motion to redetermine interest filed pursuant to this Rule shall contain the following:

(1) The petitioner's identification number (e.g., Social Security number or employer identification number) and current mailing address.

(2) A statement that the petitioner has paid the entire amount of the deficiency assessed under Code Section 6215 plus interest claimed by the Commissioner in respect of which the proceeding under this Rule has been commenced.

(3) A schedule setting forth—

(A) the amount of each payment made by the petitioner in respect of the deficiency and interest described in paragraph (b)(2) of this Rule,

(B) the date of each such payment, and

(C) if applicable, the part of each such payment allocated by the petitioner to tax and

the part of each such payment allocated by the petitioner to interest.

(4) A statement setting forth the petitioner's contentions regarding the correct amount of interest, together with a schedule detailing the computation of that amount.

(5) A statement whether the petitioner has discussed the dispute over interest with the Commissioner, and if so, the contentions made by the petitioner; and if not, the reason or reasons why not.

(6) A copy of the Court's decision which redetermined the deficiency, together with a copy of any notice of assessment including any supporting schedules or any collection notice that the petitioner may have received from the Commissioner, in respect of which the proceeding under this Rule has been commenced.

(7) If the petitioner requests an evidentiary or other hearing on the motion, then a statement of the reasons why the motion cannot be disposed of by the Court without a hearing. For the circumstances under which the Court will direct a hearing, see paragraph (d) of this Rule.

(c) Response by Commissioner: Within 60 days after service of a motion filed pursuant to this Rule, the Commissioner shall file a written response. The response shall specifically address each of the contentions made by the petitioner regarding the correct amount of interest and the petitioner's computation of that amount. The Commissioner shall attach to the Commissioner's response a schedule detailing the computation of interest claimed by the Commissioner. If the Commissioner agrees with the petitioner's request for a hearing, or if the Commissioner requests a hearing, then the response shall include a statement of the Commissioner's reasons why the motion cannot be disposed of without a hearing. If the Commissioner opposes the petitioner's request for a hearing, then the response shall include a statement of the reasons why no hearing is required.

(d) Disposition of Motion: A motion to redetermine interest filed pursuant to this Rule will ordinarily be disposed of without an evidentiary or other hearing unless it is clear from the motion and the Commissioner's written response that there is a bona fide factual dispute that cannot be resolved without an evidentiary hearing.

(e) Recognition of Counsel: Counsel recognized by the Court in the action in which the Court redetermined the deficiency the interest paid in respect of which the petitioner now seeks a redetermination will be recognized in a proceeding commenced under this Rule. Counsel not so recognized must file an entry of appearance pursuant to Rule 24(a)(3) or a substitution of counsel pursuant to Rule 24(d).

INTERIM AMENDMENT

For interim amendment of this Rule, see provisions set out after the Appendices to the Rules.

Rule 262. Proceeding to Modify Decision in Estate Tax Case Involving Section 6166 Election

(a) **Commencement of Proceeding:** A proceeding to modify a decision in an estate tax case pursuant to Code Section 7481(d) shall be commenced by filing a motion with the Court accompanied by a proposed form of decision. The petitioner shall place on the motion and the proposed form of decision the same docket number as that of the action in which the Court entered the decision which the petitioner now seeks to modify.

(b) **Content of Motion:** A motion to modify a decision filed pursuant to this Rule shall contain the following:

- (1) The petitioner's identification number.
- (2) The name and current mailing address of each fiduciary authorized to act on behalf of the petitioner.
- (3) A copy of the decision entered by the Court which the petitioner now seeks to modify.

(4) A statement that the time for payment by the petitioner of an amount of tax imposed by Code Section 2001 has been extended pursuant to Code Section 6166.

(5) A schedule setting forth—

(A) the amount of interest paid by the petitioner on any portion of the tax imposed by Code Section 2001 on the petitioner for which the time of payment has been extended under Code Section 6166;

(B) the amount of interest on any estate, succession, legacy, or inheritance tax imposed by a State on the petitioner during the period of the extension of time for payment under Code Section 6166; and

(C) the date that each such amount of interest was paid by the petitioner.

(6) A statement describing the nature of any dispute within the purview of Code Section 7481(d), or if no such dispute exists, then a statement to that effect.

(7) If the petitioner requests an evidentiary or other hearing on the motion, then a statement of the reasons why the motion cannot be disposed of by the Court without a hearing. For the circumstances under which the Court will direct a hearing, see paragraph (d) of this Rule.

(c) **Response by Commissioner in Unagreed Case:** If a dispute exists between the parties regarding either the petitioner's right to relief under Code Section 7481(d) or the amount of interest deductible as an administrative expense under Code Section 2053, then the Commissioner shall, within 60 days after service of a motion filed pursuant to this Rule, file a written response accompanied by a proposed form of decision. The response shall identify the nature of the dispute, shall specifically admit or deny each allegation set forth in the petitioner's motion, and shall state the Commissioner's position in respect of each disputed matter. If the Commissioner agrees with the petitioner's request for a hearing, or if the Commissioner requests a hearing, then the response shall include a statement of the Commissioner's reasons why the motion cannot be disposed of without a

hearing. If the Commissioner opposes the petitioner's request for a hearing, then the response shall include a statement of the reasons why no hearing is required.

(d) **Disposition of Motion:** A motion to modify a decision filed pursuant to this Rule will ordinarily be disposed of without an evidentiary or other hearing unless it is clear from the motion and the Commissioner's written response that there is a bona fide factual dispute that cannot be resolved without an evidentiary hearing.

(e) **Recognition of Counsel:** Counsel recognized by the Court in the action in which the Court entered the decision which the petitioner now seeks to modify will be recognized in a proceeding commenced under this Rule. Counsel not so recognized must file an entry of appearance pursuant to Rule 24(a)(3) or a substitution of counsel pursuant to Rule 24(d).

(f) **Cross-Reference:** For the need to move the Court to retain its official case file in the action with respect to which the petitioner seeks to modify the decision, see Rule 157.

TITLE XXVI.—ACTIONS FOR ADMINISTRATIVE COSTS

Rule 270. General

(a) **Applicability:** The Rules of this Title XXVI set forth the special provisions which apply to actions for administrative costs under Code Section 7430(f)(2). Except as otherwise provided in this Title, the other Rules of Practice and Procedure of the Court, to the extent pertinent, are applicable to such actions for administrative costs.

(b) **Definitions:** As used in the Rules in this Title—

(1) "Reasonable administrative costs" means the items described in Code Section 7430(c)(2).

(2) "Attorney's fees" include fees paid or incurred for the services of an individual (whether or not an attorney) admitted to practice before the Court or authorized to practice before the Internal Revenue Service. For the procedure for admission to practice before the Court, see Rule 200.

(3) "Administrative proceeding" means any procedure or other action before the Internal Revenue Service.

(c) **Jurisdictional Requirements:** The Court does not have jurisdiction of an action for administrative costs under this Title unless the following conditions are satisfied:

(1) The Commissioner has made a decision denying (in whole or in part) an award for reasonable administrative costs under Code Section 7430(a).

(2) A petition for an award for reasonable administrative costs is filed with the Court.

(d) **Burden of Proof:** For the rules regarding the burden of proof in claims for administrative costs, see Rule 232(e).

INTERIM AMENDMENT

For interim amendment of this Rule, see provisions set out after the Appendices to the Rules.